

SENATE BILL REPORT

SB 5296

As of February 24, 2013

Title: An act relating to the model toxics control act.

Brief Description: Concerning the model toxics control act.

Sponsors: Senators Ericksen, Baumgartner, Rivers, Bailey, Delvin and Honeyford.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 1/23/13, 2/13/13 [DPS-WM, DNP].

Ways & Means: 2/20/13.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 5296 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Brown, Chase and Honeyford.

Minority Report: Do not pass.

Signed by Senators Ranker, Ranking Member; Billig.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sherry McNamara (786-7402)

Background: The state Model Toxics Control Act (MTCA) is carried out by the Department of Ecology (DOE) to ensure that the vast majority of sites at which hazardous substances have been released are cleaned up. MTCA is funded by a 0.70 percent tax on the wholesale value of hazardous substances, cost recovery from remedial actions, mixed waste fees, and to a lesser extent fines, penalties, and other charges. The state toxic control account receives 47 percent of the revenue obtained from the hazardous substance tax while the local toxic control account receives 53 percent.

DOE is responsible to investigate, conduct remedial actions, enforce actions to protect human health, and provide technical and administrative assistance. DOE must prioritize funding to

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clean up hazardous waste sites and prevent future hazardous waste sites. Hazardous waste sites are ranked by considering the amount and type of contamination, the risk the contamination will spread, and routes of exposure. Sites are considered a higher priority when the contamination threatens drinking water supplies, exists in high quantity or over a large area, is toxic to animals or fish, may affect a body of water, or affects public health.

Liable parties must clean up sites contaminated with hazardous materials. DOE uses several methods to assist potentially liable persons to clean up hazardous waste sites such as the voluntary cleanup program, consent decrees, and agreed orders.

The state and local toxics control accounts provide funding for activities such as state programs for hazardous and solid waste planning, management, and enforcement; financial assistance for local hazardous and solid waste programs; and assistance for potentially liable persons to pay for remedial actions under certain circumstances. DOE must use local toxic control account funds for grants and loans to local governments with a prioritized order beginning with remedial actions, hazardous waste plans and programs, solid waste plans and programs, cleanup of methamphetamine production sites, and cleanup and disposal of hazardous substances from abandoned or derelict vessels.

DOE must prepare a ten-year financing report every two years. The report must identify long-term remedial action project costs, track expenses, and project future needs. Additionally, DOE must project the remedial action need, cost, revenue, and recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both the local and state toxics control account.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): The use of MTCA funds are prioritized and priority for use of the funds is given to cleanup of high priority hazardous waste sites that have a completed remedial investigation or feasibility study, finalized cleanup action plan, and are ready to begin clean-up action; cleanup and reuse of brownfield properties; and cleanup of properties where local communities and liable parties are ready to begin clean-up action. The uses for state and local toxics control accounts are specified. MTCA funds may not be used for activities without a clear nexus to hazardous waste or substance prevention, control, or remedial actions.

DOE must establish model remedies for common categories of facilities and types of hazardous substances to streamline and accelerate routine types of cleanups. DOE must solicit and consider model remedies from qualified persons. DOE must allow the use of a model remedy if a facility meets the requirements for that use. Further studies for feasibility of alternative remedies may not be required.

The Special Category E account is created and receives revenue from the state and local toxic control accounts when the revenue from the hazardous substance tax is forecasted to exceed \$150 million. The Special Category E account funds may be spent only on performance and outcome-based projects and activities that include support cleanup, monitoring, and prevention of the release of hazardous substances; water and environmental health protection and monitoring; and water pollution prevention. Other uses are specified. The amounts of

\$25 million from the state toxic control account and \$75 million from local toxic control accounts are transferred to the Special Category E account.

DOE must plan to clean up hazardous waste sites and prevent new hazardous waste sites at a pace that matches the cash resources in the state and local toxic control accounts and the Special Category E account.

The ten-year financing report must include the number of model remedy proposals prepared by qualified private sector engineers, consultants, and contractors, and the success rate of model remedy proposals as measured by the number of jobs created and achievement of the clean-up standard within the proposed timeframe and budget. DOE must provide to the Legislature budget estimates for multi-biennia clean-up projects that will cost over \$10 million and an accounting of projects supported by the Special Category E account.

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Substitute): Revises uses of state and local toxics control account funds. Clarifies the funding of the Special Category E account and specifies the uses of these funds. Creates a new radioactive mixed waste account and transfers to this account the mixed waste funds from the state toxics control account.

Appropriation: None.

Fiscal Note: Requested on February 14, 2013.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Energy, Environment & Telecommunications): PRO: We need to make sure MTCA funding goes to cleanup, jobs, and economic development. There needs to be accountability and transparency in the budgeting process. There needs to be review of the effectiveness and efficiency of the programs to maximize the use of the funds. The bill would allow for more dollars to be spent more rapidly. Encouraging the use of model remedies is a great idea. The main purpose of these funds is to prevent and clean up hazardous waste sites. We need to stop diverting money away from the main purpose of MTCA. Money spent on other programs is money not being spent on the cleanup process.

CON: We need to remember the concept that successful cleanup is reliant on reducing toxic substances in the environment, making sure that toxic substances are properly handled, and protection of sites that have been cleaned up. MTCA provides for the continued reduction of toxic substances in the environment which is necessary to maintain clean up of sites. The state toxics control account is used in many state programs that deal with hazardous management planning and inspections. The bill would negatively impact the core prevention programs and waste management activities such as inspections of hazardous management planning inspections waste sites, solid waste planning and inspections of sites, waste generation, oil spills prevention and stormwater source control, and grants to local

governments. This would negatively affect core public health functions necessary to protect public health from the effects of toxic substances in the environment. Removing the local toxics control account would directly interfere with ongoing site cleanups. The bill could result in unintended elimination of some jobs.

OTHER: We like the unquestionable support to cleanup. It is unclear as to the impacts to currently on-going projects. There needs to be a conversation on how the dollars are spent.

Persons Testifying (Energy, Environment & Telecommunications): PRO: Greg Hanon, Western States Petroleum Assn.; Brandon Houskeeper, Assn. of WA Business.

CON: Jim Pendowski, DOE; Maryanne Guichard, Dept. of Health; Art Starry, Thurston County Public Health, WA State Environmental Health Directors; Rod Brown, WA Environmental Council; Kerry Graber, WA Federation of State Employees.

OTHER: Johan Hellman, WA Public Ports Assn.; Carl Schroeder, Assn. of WA Cities.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill works to reprioritize MTCA to get people to work and clean-up hazardous sites. This bill will put more money into projects and expedite the clean-up of the most contaminated toxic sites in the state. Stormwater is a priority and this bill covers the investment in stormwater. Cleaning up sites will increase property values. It is important to focus the funds on the priority projects and not transfer the funds to the general fund and other areas.

CON: This bill takes the will of the people and circumvents it. The bill needs to have a clear statement of what is in and out for projects. The public participation grants are eliminated which decreases citizen participation and involvement. The Coordinated Prevention Grants for solid waste are shifted into the new category E funding. Key prevention programs are jeopardized. The bill is confusing and puts programs at risk.

OTHER: The new account will provide more certainty for long term funding. A study by Joint Legislative Audit and Review Committee (JLARC) should be conducted to see what has been achieved under MTCA. The prioritization of funds should be done through the budgeting process.

Persons Testifying (Ways & Means): PRO: Senator Ericksen, prime sponsor; Brandon Houskeeper, Assoc. of WA Business; Greg Hannon, Western States Petroleum Association; Johan Hellman, WA Public Ports Association; Jerry Smedes, NW Environmental Business Council;

CON: Dolores Mitchell, WA Federation of State Employees; Erik Fairchild, Department of Ecology; Bruce Wishart, Sierra Club and Puget Soundkeeper; Darcy Nonemacher, WA Environmental Council; Suellen Mele, Zero Waste Washington.

OTHER: Laura Merrill, WA State Association of Counties; Art Starry, Thurston County Public Health; John Sherman, Tacoma-Pierce County Health Department; Jim Cahill, Office of Financial Management; Carl Schroeder, Association of Washington Cities.